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File No: 19/36.1

June 13, 2012

**VIA U.S. & ELECTRONIC MAIL**

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**DOCKET**

**11-AFC-2**

DATE JUN 13 2012

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Commissioner Karen Douglas, Presiding Member  
Commissioner Carla Peterman, Associate Member  
California Energy Commission Docket Unit  
Hidden Hills Solar Electric Generating System (Docket No. 11-AFC-2)  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Re: Hidden Hills Solar Electric Generating System, Docket No. 11-AFC-02; Southern Inyo Fire Protection District's Reply to Applicant's May 29, 2012 Analysis of Cooperation Agreement and Reimbursement for Costs

Dear Commissioners Douglas and Peterman:

This communication sets forth the reply of the Southern Inyo Fire Protection District (the "District")<sup>1</sup> to the Applicant's May 29, 2012 response (the "Applicant's Response") to the District's May 17, 2012 request for reimbursement of costs (the "Request") under Title 20 California Code of Regulations<sup>2</sup> section 1715. Though the District is pursuing a cooperation agreement with the Applicant, the purpose of this communication is to reserve the rights of the District and to clarify certain inaccuracies contained in the Applicant's Response, in the event that the Applicant and the District are unable to enter into a cooperation agreement.

**I. The District is the Designated Provider of Fire and Emergency Medical Services to the Project Site**

The District, which was formed in 1993<sup>3</sup>, is the local agency authorized to provide fire

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<sup>1</sup> This office serves as Special District Council to the District

<sup>2</sup> All section references are to Title 20 of the California Code of Regulations.

<sup>3</sup> The District is governed by the Fire Protection District Law of 1987 (Health & Safety Code section 13800 *et seq.*) and was formed on August 3, 1993 by Inyo County Local Agency Formation Commission Resolution 93-1, consistent

prevention, fire suppression, and emergency medical services in an approximately 1,250 square mile area, including the site of the Hidden Hills Solar Electric Generating System (the "Project"). The District operates on a very limited budget, and is staffed by only one full-time employee, a handful of paid-call and volunteer firefighters, and an administrative officer.

The Project is located on 3,277 acres and is expected to employ up to 380 employees. A project of this magnitude must not only comply with all applicable fire standards, but will also strain the District's limited resources. For this reason, on May 15, 2012 the District submitted the Request, with respect to costs associated with the representation, analysis, and mitigation of the impact of the Project upon the District. In the event that the District and the Applicant are unable to agree to a satisfactory cooperation agreement, the District requests that the Commission resolve the matter with a written order, consistent with section 1715(e).

## **II. Timeliness of the District's Request**

Section 1715 allows local agencies (here, the District) to be reimbursed for certain costs incurred in accordance with the services performed by that local agency.

The Applicant mischaracterizes section 1715(c)(2) in its assertion that proposed budgets not filed within 21 days of receiving a request for review from the commission "must be denied." Applicant's Response p 2. Nowhere does the regulation indicate that failure to file an application within 21 days of receiving a request for review acts as an absolute bar to reimbursement. In fact, section 1715 (c)(2) expressly states that the timeliness will *not* bar reimbursement, stating in part that:

A local agency's failure to file a proposed budget within the time period specified herein *shall not prevent it from receiving reimbursement*; however, failure to use the approval process described in this section *creates a risk* that the local agency will not be reimbursed for work already performed. (emphasis added).

The plain meaning<sup>4</sup> of this section is that the District is not barred from receiving reimbursement for *additional* expenses, and any nonconformity with "the approval process" only "creates a risk" that the District will not be reimbursed for *past* work. The District respectfully requests that, should the District and the Applicant fail to enter into an acceptable cooperation agreement, the Commission utilize its inherent discretion (*see* section 1715(e)) and allow the

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with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code section 56000, *et seq.*, formerly the Cortese-Knox Local Government Reorganization Act of 1985).

4 The same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules of administrative agencies. *Ganey v. Doran* (1987) 191 Cal.App.3d 901, 908. If the language is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute). *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

District to be reimbursed for all of its expenses, both past and future.

Due to the District's small size and limited resources, it does not have a large administrative staff and does not have employed counsel. Stated plainly, the District was unaware of the narrow time constraints of section 1715(c)(2) and asks that the Commission view any delay as excusable neglect. Otherwise, a chilling effect may occur on local governmental agencies, particularly special districts, by prohibiting them from properly determining the impact of facilities, like the Project, with the specified services they provide and the resulting impact that taxpayers would have to assume.

### **III. The District's Costs are Eligible for Reimbursement**

The Applicant is correct that section 1715(b) exempts certain expenses from reimbursement, including: (1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters which the agency is requested to review or not within the area of the agency's expertise; (2) expenses for which it receives payment from other sources; (3) expenses incurred in advocating a position as a formal intervener to the proceeding; or (4) entertainment and first class travel expenses.

However, the District is not seeking reimbursement for costs that are characterized as "ineligible."

First, the District is not defending any position, let alone defending any position that is not related to the matters in which it was requested to review or matters outside its area of expertise. As the local agency having jurisdiction for providing fire prevention, fire suppression, and emergency medical services to the Project site<sup>5</sup>, the matters in which the District has provided input are directly within its areas of expertise.

Second, the expenses are not of the nature in which the District would otherwise be guaranteed to receive payment from other sources, as a potential cooperation agreement may or may not adequately compensate the District.

Third, the expenses do not relate to the advocating of positions as a formal intervener. Rather, the District, as an interested party, is providing input as requested by the Commission and is ensuring that the Project complies with applicable state law, including but not limited to (1) the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*, "CEQA"); (2) the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25000 *et seq.*); and (3) the Emergency Medical Services Act (Health and Safety Code section 1797 *et seq.*).

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<sup>5</sup> Consistent with Health and Safety Code sections 13861 and 13862 and Inyo County Local Agency Formation Commission Resolution 93-1.

Commissioner Karen Douglas, Presiding Member  
Commissioner Carla Peterman, Associate Member  
June 13, 2012  
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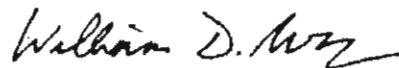
Fourth, the costs are not related to entertainment. Although travel expenses are included, they were not "first class travel expenses" and were carried out at the cheapest rate available.

Additionally, the District's Request, which was transmitted to both the Applicant and the Commission, sets forth District's costs and provides formulas, estimates, and the rationale for the corresponding costs. If necessary, the District will happily provide additional information to clarify any confusion that may result from these calculations.

#### **IV. Conclusion**

The District maintains that its requested reimbursement is in conformity with section 1715. Nonetheless, the District continues to pursue a cooperation agreement with the Applicant without the need for involvement by the Commission, thus avoiding utilizing important agency resources.

Very truly yours,



William D. Ross

WDR:dps

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### DECLARATION OF SERVICE

I, Le Chaune Metoyer, declare that on June 13, 2012, I served and filed a copy of the attached Letter to Commissioner Karen Douglas and Commissioner Carla Peterman Regarding Southern Inyo Fire Protection District's Reply to Applicant's May 29, 2012 Analysis of Cooperation Agreement and Reimbursement for Costs, dated June 13, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: [[www.energy.ca.gov/sltincases/hydrogen\\_energy/index.html](http://www.energy.ca.gov/sltincases/hydrogen_energy/index.html)].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

**(Check all that Apply)**

**For Service to all other parties:**

- ☒ Served electronically to all e-mail addresses on the Proof of Service list;
- ☒ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person serve, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date of those addresses **NOT** marked "e-mail preferred."

**AND**

- ☒ by sending an electronic copy to the e-mail address below (preferred method); **OR**
- ☐ by depositing an original and 12 paper copies in he mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**

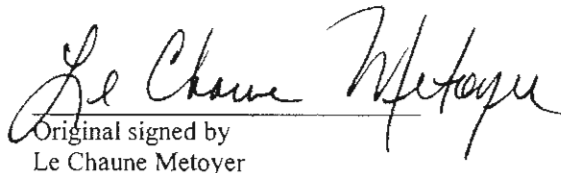
Attn: Docket No. 11-AFC-2  
1516 Ninth Street, MS-4  
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***OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:***

- ☐ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
Michael J. Levy, Chief Counsel  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Original signed by  
Le Chaune Metoyer



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – [WWW.ENERGY.CA.GOV](http://WWW.ENERGY.CA.GOV)

**APPLICATION FOR CERTIFICATION  
FOR THE HIDDEN HILLS SOLAR ELECTRIC  
GENERATING SYSTEM**

**DOCKET NO. 11-AFC-02  
PROOF OF SERVICE  
(Revised 6/5/2012)**

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